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ILLEGAL PRACTICE BILLS

COMMUNITY PROPERTY FROM ABROAD

RECEIVERSHIP PROCEEDINGS

PUBLICATION OF SUMMONS

NEW BAR COMMITTEES

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The Bills to Stop Illegal Practice Now Pending in the Legislature

By Ewell D. Moore, of the Los Angeles Bar

EVERY LAWYER IN CALIFORNIA, men and women, should immediately and actively interest themselves in seeing that the four so-called "State Bar bills," now pending in the Legislature, are enacted into laws.

These bills are designed to prohibit the illegal practice of law.

Every since the State Bar Act was put into effect there has been criticism from certain persons and corporations directed at the State Bar because it did not "do something" to stop the practice of law by unauthorized individuals and corporations. Most of this criticism was premature and unwarranted, because the problem required long and careful consideration and investigation. This has been carried on almost continuously, and has now culminated in the introduction of the four bills, known as Assembly Bills Nos. 557, 558, 559 and 560.

The subject matter covered by this proposed legislation was approved in principle by the State Bar Convention at San Diego last year; later was considered by the Legislative Committee, and then endorsed by the Board of Governors. The bills were drafted by A. G. Bailey, member of the Board of Governors, and introduced in the Assembly by Messrs. Cronin, Levey, Feigenbaum, and Williamson of San Francisco; Roland, Hoffman and Fisher, of Alameda County, and Anglim, of Contra Costa county. The first three, Nos. 557, 558 and 559, may be described as "injunctive relief measures" and the fourth, No. 560, as the "contempt measure."

All have been endorsed by the Board of Trustees of the Los Angeles Bar Association and by other bar associations throughout the state.

Injunctive Relief

The first of these bills, A. B. 557, seeks to amend Section 367 C. C. P., and to add a new section, numbered 367a, relating to parties in certain civil actions. The only change in Section 367 is to add the words, *"Section 367a and"*—

The new section, 367a, reads as follows:

> "367a. Actions for injunction to prohibit any person, firm or corporation from doing any act, or exercising any right, or from practicing, pursuing or engaging in any profession, trade or vocation for which a license, certificate or permit to practice, pursue or engage in is required under any statute of this state, without having a valid unrevoked license, certificate or permit therefor duly issued by competent authority, may be prosecuted without averment or proof of damage, by the Attorney General or by the district attorney of the county in which the cause of action arises in the name of the people of the State of California, upon his own complaint or upon the complaint of any person, firm, corporation or association. Such actions may also be begun and maintained by and on the complaint of any board, commission, public corporation, officers, offcer or department of Government of this state having administrative jurisdiction relating to the general subject matter involved in the action."

It will be seen that, under this section, if enacted, actions for injunction will lie against any person, firm or corporation to prohibit the practice of any profession or trade for which a license is required under any statute, and may be prosecuted, without averment or proof of damage, by the Attorney General, or the district attorney of the county in which the cause of action arises, in the name of the people of the state. Complaint may be by such officers or the action may be begun by any board, commission, public corporation or officer or department of the state having administrative jurisdiction of the matter involved.

Section 3422 C. C. Amended

The second of these bills, No. 558, seeks to amend Section 3422 C. C. relating to injunctions, by adding a new subdivision of that section, numbered 5, which reads as follows:

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San Francisco Bar Association Establishes "The Bulletin" Its New Official Publication

THE SAN FRANCISCO BAR ASSOCIATION has just issued the first number of "The Bulletin," official publication of that organization. In his "salutatory," President F. M. McAuliffe announces that the Board of Governors has thus carried out a project long contemplated, namely, the establishment of a medium of communication between the President and Governors and the membership.

The first number is devoted to news of the activities of the Association. These embrace the taking of a plebiscite on the question of retention or abolition of the office of Public Defender, the consideration by a committee of the pending legislative measures to effect a drastic reduction in the salaries of judges, and the subject of a different method for the selection of judges. There is also a digest of the report of committee on legal education, which recommends that the Association consider the advisibility of instituting lectures or other modes of education for the purpose of informing members of the bar upon specialties not covered in law school, such as office management, proceedings before commissions, income taxation and other special subjects.

"The Bulletin" though of few pages, is carefully and effectively condensed.

"There are many problems relating to the administration of justice," says the President in his statement, "for which it is the obligation of the bar to find a solution that will be satisfactory to the lawyer and the litigant. The local Bar Associations can find plenty of work to do; their function has been by no means eclipsed by The State Bar, which of necessity cannot be expected to direct its energies to the discussion or settlement of local problems.

"This organization hopes to cooperate worthily with The State Bar; to aid in maintaining the dignity of the courts; to increase the prestige and influence of the legal profession; to see to it that the morale of the judiciary is not weakened by attacks upon its just compensation; to see to it also that only worthy men are placed upon the bench; to insist that nothing be done by legislature or local governing bodies that will tend to hamper progress toward a better method of administering justice; and to assist in protecting in every manner possible the rights of the public."

The Los Angeles Bar Association, through "The Bulletin," extends its hearty greetings to the new publication.

"5. To prohibit any person, firm or corporation from doing any act, or exercising any right, or from practicing, pursuing or engaging in any profession, trade or vocation for which a license, certificate or permit to practice, pursue or engage in, is required under any statute of this state, without having a valid unrevoked license, certificate or permit therefor duly issued by lawful authority."

Section 526 C. C. P. Amended

The third of this group of four bills, A. B. 559, is an Act to amend Section 526 C. C. P., relating to injunctions, by adding to the cases in which an injunction may be granted, a new subdivision, numbered 8. As amended by the bill that section reads as follows:

"526. An injunction may be granted in the following cases:

* * * * * * * *

"8. To prohibit any person, firm or corporation from doing any act, or exercising any right, or from practicing, pursuing or engaging in any profession, trade or vocation for which a license, certificate or permit to practice, pursue or engage in, is required under any statute of this state, without having a valid unrevoked license, certificate or permit therefor duly issued by lawful authority."

It will be noted that the language of this new subdivision is identical with that of the new subdivision 5 of Section 3422, C. C., as provided for in A. B. 558.

The Contempt Bill

The fourth, A. B. 560, which may be called the "Contempt" bill, is an Act to amend Sections 281 and 1209 C. C. P. relating to contempt of court. It changes the reading of Section 281 C. C. P. as it now stands, by striking out the words: *"in any court, except a justice's court or police court."*

As amended by the bill, Section 281 C. C. P. reads as follows:

"281. If any person shall practice law without having received a license as attorney and counselor, he shall be guilty of a contempt of court."

Section 1209, C. C. P., which specifies acts or omissions in respect to a court or court proceedings as constituting contempts of the authority of the court, is amended by the bill by striking from subdivision 13, the following words: *"in any court, except a justice's or police court,"* making subdivision 13 of Section 1209 C. C. P. to read as follows:

"13. Practicing law, or advertising or holding one's self out as practicing or as entitled to practice law, without having received a license as attorney and counselor, issued under the laws of this state. But no speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings."

Status of Bills

At the time *The Bulletin* goes to press, the first of the four bills, A. B. No. 557, had been defeated by a vote of 43 to 33, but it will come up again. The other three had been reported out of the Judiciary Committee with the recommendation "do pass," and were on the third reading file. A vote may be taken on them at any time. None of the four bills has been introduced in the Senate.

If this legislation shall fail it will be due to the apathetic attitude of the individual members of the Bar. It will succeed if they will actively and intensely concern themselves about it. The interest of the public is involved quite as much as the interest of the lawyers. Similar laws have been enacted in other states, and still others will follow the lead of California in this regard. Let us get behind these bills.

RADIO-TELEVISION BAR PROGRAM

The Kansas City Bar Association recently inaugurated a series of weekly radio-television addresses over radio station KMBC and television station WGXAL. This is said to be the pioneer television transmission to accompany a regular broadcast program. The speakers were the president and the five past-presidents of the association. Subject, "The Relation of the Bar to the Public."

Community Property From Abroad

Effect of Late Supreme Court Decision in Estate of Thornton Discussed

By Robert A. Morton, of the Los Angeles Bar

ON MARCH 1, 1933, in *Estate of Thornton*, 85 Cal. Dec. 253, our Supreme Court in Bank upheld the constitutionality of Civil Code, section 164, thereby determining for the present, a controversy that has held forth among lawyers for many years. The decision holds that where marital property was acquired in a foreign jurisdiction in such manner that it would have been community if acquired in California, and brought here at time of, or subsequent to, change of domicile to this state after the 1917 amendment of section 164, it became community. As most of us are immigrants and as much wealth has come and continues to come from other states where the doctrine of community is regarded more or less as the cumbersome survival of an old Spanish custom in California, the question has been one of prime importance in adjusting inheritance taxes and in divorce and probate practice.

Section 164, as amended in 1917, provided that, excepting property owned by the husband prior to marriage and that acquired after marriage by gift, bequest or descent, all property acquired by husband or wife while domiciled elsewhere which would not have been the separate property of either if acquired while domiciled in California, is community property. The retroactive amendment of 1923 was voided by *Estate of Frees*, 187 Cal. 150 and *Estate of Drishaus*, 199 Cal. 369, but appears to be re-instated by *Estate of Thornton* solely as regards prior acquisition.

In *Kraemer v. Kraemer*, 52 Cal. 302, *Estate of Arms*, 186 Cal. 554, and *Estate of Nickson*, 187 Cal. 603, our Supreme Court had considered the status of marital property arriving from common law states prior to 1917, and set forth the rule of *George v. Ransom*, 15 Cal. 322, that separate property acquired abroad retained a separate character in California. I have believed that such rule was based upon an interesting and illogical twist of reasoning, rather than upon an understanding of the true nature and scope of the problem, in that the incidents attaching to separate property in common law states cannot in equity be transmuted into the separate property incidents of this state as I shall endeavor to point out.

Decision Analyzed

In *Estate of Thornton*, however, the court found that the property had been acquired in Montana from 1886 to 1919; that the parties established domicile and removed their property here in 1919; and that if acquired here the property would not have been the separate estate of either husband or wife. The facts brought the case squarely within the meaning of section 164.

The court held (to be brief) that the question was a constitutional one to be construed along with positive law (section 164), which law had in effect abolished the rule of comity relating to marital estate; it re-affirmed the former decisions above noted as supported by comity as it existed prior to enactment of section 164, as amended in 1917; that the rule against prohibition of the due process clause, in its constitutional sense, means that no state can deprive any person of a vested right which he possesses *in that jurisdiction*, but is not applicable to vested rights in property then situated in another jurisdiction; that the status impressed upon the property by the laws of Montana can have no extra-territorial force or effect in contravention of the positive statutes of the state to which the property has been removed, and therefore *the due process clause is not involved in the case;* and finally, that in any event the power of a state to regulate the marriage relation and its incidental property rights is supreme within its borders.

Without discussing all of the reasoning of the case, although I agree with the final conclusion, I would like to go to the rock-bottom of the question and consider generally and upon the merits the claim of the husband from abroad that section 164 would operate to deprive him of vested rights.

Common Law Rule Modified

Where the common law rules relating to marital property are not modified and liberalized by statute, and such states are few, the husband possesses in his lifetime the control and the power of disposition; upon his decease the wife succeeds to her dower portion. Most common law states have considerably enlarged the interests and share of the wife. In Missouri the wife succeeds to a share of the personalty as well as the realty; in Illinois the wife may decline to take under the will and may claim one-half of the realty and personalty. And in all states of enlarged dower the husband's control and disposition during his lifetime is restricted to alienation for value only, the wife having the right to appeal to the courts to restrain an illegal alienation as a fraud upon her dower property rights.

Thus, in the common law states the wife has more than the mere expectancy of an heir, and rather a contingent interest of sufficient vitality at all times to warrant the protection of the courts. But the rule set forth in the *Estate of Arms* line of cases such interest was lost to the wife the instant the marital estate arrived in California, while the fortunate husband became endowed with what he never dreamed of possessing in his home state, namely, the unrestricted power of alienation including the right upon his decease to pass the entire estate to strangers.

Wife's Interest Abroad

It has been argued that the wife's interest abroad was not *vested;* but if true it seems to me that the answer is inadequate. Whether or not the wife's marital interest abroad is vested, or is a legal or equitable incident, or a beneficial or contingent interest, in any event *it is property* which may be made the subject of contract and may pass by deed. That dower and its incidents constitute substantial, subsisting and valuable rights in property has been frequently affirmed by the courts of numerous common law states and of the United States.

The Supreme Court of Iowa has said:

"It is claimed by appellants that the dower interest of the wife is inchoate and contingent;

that she may die before the husband and then her estate would never vest, and that during the lifetime of the husband she cannot be heard to complain whatever disposition be made of the property subject to dower. . . . Although the wife's dower during the lifetime of her husband is inchoate and uncertain, yet it possesses the elements of property. The relinquishment of dower constitutes a valuable consideration to support the conveyance of property to the wife. Its probable present value can be computed by the annuity tables.

"It (the wife's dower) was a valuable interest which is frequently the subject of contract and bargain. It was an interest which the law recognizes as the subject of conveyance by deed. . . . Although contingent, it is a valuable interest, and may be sold, conveyed or released for a valuable consideration, and the law treating it as valuable, and as an existing incumbrance upon land, has provided a solemn mode for its release, guarding the wife from imposition or influence from the husband in the act of surrender." (Busick v. Busick, 44 Iowa 259; also 139 Iowa 115; 151 Iowa 588.)

The Supreme Court of Missouri has said:

"The right of the married woman to dower in the land of the husband rests on as secure foundation as does the fee of the husband in such land. . . . So that neither the alienation of the land by the husband, nor alienation resulting from proceedings in invitum against him will invest the alienee as against the wife's dower right; such right remains intact until relinquished in the manner provided by law." (William v. Courtney, 77 Mo. 587.)

In *Arnett v. Reade*, 220 U. S. 311, the Supreme Court held that title to such community, even though acquired prior to enactment of the statute requiring the wife to join, would not pass without her consent, thereby in effect overruling *Spreckels v. Spreckels*, 116 Cal. 339, to the contrary on the precise point (Civil Code, section 172a). The higher court said:

"It is not necessary to go into the nature of the wife's interest during marriage. The discussion has fed the flames of juridical controversy for many years. However this may be, it is very plain that the wife has a greater interest than the mere possibility of an expectant heir. For it is conceded by the court below, and everywhere we believe, that in one way or another she has a remedy for an alienation made in fraud of her by her husband. And as she was protected against fraud already, we can conceive no reason why the legislature could not make that protection more effectual by requiring her concurrance in her husband's deed of the land."

Spreckels Case Overruled

In Arizona the Supreme Court has said that the beneficial interests of the spouses are equal. Idaho appears to place legal title to community in both husband and wife. In Nevada the courts have said that the wife holds the same interest as the husband without defining that interest. In New Mexico it is held that the wife holds a present right in community which has not been classified as legal or equitable. In Texas the beneficial interest of husband and wife are equal, the rule probably vesting legal title in the husband and equitable title in the wife. In Washington it is held that during marriage the wife holds legal title to her share. (McKay, Community Property, pp. 742-44.)

Estate of Arms

The reasoning in the *Estate of Arms* cases embodied a fallacy, it seems to me, in that those cases which purported to maintain the separate property status of other states, in fact and in law re-clothed the foreign acquired property in the very different accoutrements of separate property peculiar to California. As concerned the wife's interest, manifestly this was not a situation where a rose by any other name would smell as sweet.

As it affected the wife's interest the rule was surely confiscatory, whereas had the court taken the community viewpoint the husband in California would have been bound to avoid dissipating the estate by gift or without adequate consideration, which obligation was analogous to that prescribed in the home state with respect to dower, and the wife would have succeeded to a community share not differing substantially from her modified dower right of succession.

Harsh Rule

The practical and harsh effect of the rule as it operated in surgical fashion upon the marital interest of the wife appears in the facts of *Estate of Nickson*. In that case, after bringing the marital estate to California from Iowa, the husband expressly disinherited his wife. The court approved that transaction upon the virtue that is supposed to reside in the word *vested*, a judicial invention the meaning of which remains nebulous after endless controversy (*Arnett v. Reade, supra*), and upon what I believe was a mis-reading of Iowa opinions as to the nature and effect of dower. The California court said:

"Some question has been raised as to the rights of the wife in this property prior to its removal to California and under the laws of the state of Iowa, but we think this question is fairly set at rest by the decisions of that state holding that the dower interests of the wife under the statutes of Iowa then in force

was a **mere expectancy** dependent upon survivorship to become vested right."

That California rule was derived from the *Kraemer* case which sets forth the ancient rule that the law of the matrimonial domicile irrevocably entered into the marriage contract, and in turn falls back upon *George v. Ransom*, 15 Cal. 322, wherein the court said:

"The term *separate property* means an estate held in its use and in its title for the *exclusive benefit* either of the husband or wife."

A more liberal construction of the marital property incidents and the doctrine of implied (or tacit) consent as set forth in *Estate of Thornton* has long since been abandoned. The parties can amend the original contract of marriage, and when they consent to removal of the marital estate they are presumed to have done so with full knowledge of the property laws of the new domicile, and agreed to the application thereof to their property; and thereafter the estate is subjected to new laws of succession and inheritance, and rules for the protection thereof, which a state has long had authority to interpose by way of control over the incidents of the marital relationship. (*Estate of Hodges*, 170 Cal. 492; *Estate of Thornton, supra; Arnett v. Reade, supra; Green v. Estabrook*, 168 Ind. 123.)

Rule Remains

My point is, that the final conclusion in *Estate of Thornton* could have been as logically and justly arrived at in the *Estate of Arms* cases prior to section 164. There never has existed, in my opinion, any interstate rule of comity that would justify or require the *Estate of Arms* rule, or obligate California to destroy the wife's foreign acquired dower interest, enlarge that of the husband, and permit him in California to leave the wife a pauper and a charge upon the state. But the rule remains with us, for it continues to apply to all marital property acquired and brought here prior to 1917. (*Estate of Frees; Estate of Drishaus.*) Since such property is deemed to be separate in the California meaning of the word, the earnings thereof also constitute separate property. (*Estate of Gold*, 170 Cal. 621.)

The practical effect of the rule as within my observation has been disastrous in matters of family integrity; for it made of California a safe refuge for the common law husband who had wearied of the irksome burden of dower in his home state. It has seemed to me that the line of cases from *Kraemer* to, but not including *Estate of Thornton*, are deep offshore on a misapplication of the blanket phrase, "separate property." In fact and in law *separate* property is nothing other than a set of rules regulating marital succession and inheritance, and protecting the same.

Section 164 is a statement of what the legislature conceived the rule should be. In further defense of its constitutionality is the maxim that nothing short of a prohibition so explicit and clear as to leave no reasonable doubt upon the mind can justify the courts in declaring a legislative act null and void. (*Heney v. Jordan*, 179 Cal. 24.; it has been said that where theories clash the law must stand.

Does Substantial Justice

Whether or not one believes the community property system to be the fruition of marital justice, or on the contrary regards it as a deterrent to marriage, an incentive for divorce and an unstable factor in marital property, nevertheless it abides with us, and should include the authority to impartially protect respective rights in marital property within its jurisdiction irrespective of ever-changing incidents abroad. Nor can it reasonably be said, I feel, that section 164 fails to effect substantial justice, which in view of the imperfections of human agencies, including both legislative and judicial machinery, is the best that can be hoped for.

A more complete discussion of the ques- *West v. West*, 206 Cal. 706, wherein re- tion may be noted in appellant's brief in versal, however, was had on other grounds.

Receivership Proceedings

Matters That Arise Most Frequently in Connection Therewith. Helpful Citations

By Emmet H. Wilson, Judge of the Superior Court

I HAVE GATHERED TOGETHER the decisions of the Supreme and Appellate courts of this state upon the questions that most frequently arise in receivership matters. It is at the suggestion of a number of attorneys who are interested in such matters that these citations are presented herewith. Manifestly it is not to be assumed that this article exhausts the subject of receivers, but it does cover the questions that arise daily in the conduct of such proceedings. It is hoped that a later article may cover other matters which are quite as important but arise less frequently.

Powers of the Court

The power to appoint a receiver exists only in the cases prescribed by law. (*White v. White*, 130 Cal. 597; *Bateman v. Superior Court*, 54 Cal. 285; *French Bank Case*, 53 Cal. 495.)

The court is without jurisdiction to appoint a receiver of a defendant's property at the suit of a simple contract creditor. The statutes of California do not authorize, and the courts cannot appoint receivers "in equity" as the same are known under Federal practice. (*Delaney v. Crystal Company*, 88 Cal. App. 784; *Fischer v. Superior Court*, 110 Cal. 129; *French Bank Case*, 53 Cal. 495; *Elliott v. Superior Court*, 168 Cal. 727; *Murray v. Superior Court*, 129 Cal. 628; *Smith v. Superior Court*, 97 Cal. 348; *Moore v. Superior Court*, 71 C. A. D. 882.)

A receiver cannot be appointed in an action involving merely legal, as distinguished from equitable, rights. (*San Jose Bank v. Bank of Madera*, 121 Cal. 543; *Bateman v. Superior Court*, 54 Cal. 285; *Cal. Delta Farms v. Chinese Am. Farms*, 204 Cal. 524; *Miller v. Oliver*, 174 Cal. 407; *Bennallack v. Richards*, 125 Cal. 427; *Stock & Bond Guarantee Co. v. Superior Court*, 108 Cal. App. 360; *Smith v. Superior Court*, 97 Cal. 348.)

A receiver cannot be appointed to carry into effect a simple money judgment. A writ of execution furnishes sufficient remedy and is the only means for enforcement of the judgment. (*White v. White*, 130 Cal. 597; *San Jose Bank v. Bank of Madera*, 121 Cal. 543; *Cal. Delta Farms v. Chinese Am. Farms*, 204 Cal. 524.)

Jurisdiction of Court

Jurisdiction can be conferred only by law, and the same depends upon the constitution and the statutes. Jurisdiction of the subject matter cannot be given, enlarged, or waived by consent, waiver, estoppel, or stipulation. Consent of a defendant, whether expressed in a mortgage or other instrument, or by stipulation filed in the action, will not authorize the appointment of a receiver if the court has not jurisdiction without such consent. (*Scott v. Hotchkiss*, 115 Cal. 89; *Baker v. Varney*, 129 Cal. 564; *Lewis v. Shaw*, 77 Cal. App. 99; *Amos v. Superior Court*, 196 Cal. 677; *Harrington v. Superior Court*, 194 Cal. 185; *Smith v. Superior Court*, 97 Cal. 348; *Elliott v. Superior Court*, 168 Cal. 727.)

If the order appointing the receiver is void, all subsequent orders relating to the purported receivership are likewise void, and all acts of the purported receiver performed in pursuance of his illegal appointment are void. There is, in fact, no receiver. If he takes possession of property under a void order he is a mere trespasser. (*Sullivan v. Gage*, 145 Cal. 759; *Grant v. L. A. & P. R. Co.*, 116 Cal. 71; *Havemeyer v. Superior Court*, 84 Cal. 327; *Costa v. Superior Court*, 137 Cal. 79; *Elliott v. Superior Court*, 168 Cal. 727; *Smith v. L. A. & P. R. Co.*, 4 Cal. Unrep. 237; *Moore v. Superior Court*, 71 C. A. D. 882.)

Void Orders

A void order may be attacked collaterally, may be resisted or violated without fear of punishment for contempt, and may be treated as if it had not been made. An action brought by a purported receiver, acting under a void order, may be defended against on the ground of invalidity of appointment. (*Baker v. Varney*, 129 Cal. 564; *State v. Dist. Ct.*, 21 Mont. 155, 69 A. S. R. 645; *Phila. Bank v. Smith*, 227 Pa. St. 354, 136 A. S. R. 884; *State v. Washoe etc. Ct.*, 49 Nev. 145; *Luckenbach v. Laer*, 190 Cal. 395; *Preston v. Superior Court*, 184 Cal. 658; *Grant v. Superior Court*, 106 Cal. 324.)

The court has no power, through a receiver appointed in an action commenced by a simple contract creditor, to take charge

Members' Dinner Meeting

FRIDAY, APRIL 21, 1933

JONATHAN CLUB, 6:00 P. M.

GORDON S. WATKINS, Ph. D.,
Professor of Economics and Dean of Summer Session of
UNIVERSITY OF CALIFORNIA AT LOS ANGELES,
will be the speaker of the evening,
on the subject of
"UNCLE SAM'S ECONOMIC DILEMMA."

GUY RICHARDS CRUMP,
President of the State Bar, will present the problem of
"THE SOLICITATION OF BUSINESS."

Dinner $1.25. Informal. Guests welcome.

of the business of a corporation prior to dissolution. Such act would be a usurpation of the powers of the directors, and, by indirect means, a virtual dissolution of the corporation. Insolvency of a corporation does not authorize the court to appoint a receiver of the corporation's business at the instance of a creditor. (*French Bank Case*, 53 Cal. 495; *Elliott v. Superior Court*, 168 Cal. 727; *Smith v. Superior Court*, 97 Cal. 348; *Fischer v. Superior Court*, 110 Cal. 129; *Murray v. Superior Court*, 129 Cal. 628; *Moore v. Superior Court*, 71 C. A. D. 882; *Delaney etc. v. Crystal etc.*, 88 Cal. App. 784; *Stock & B. G. Co. v. Superior Court*, 108 Cal. App. 360.)

The court may set aside a void order *sua sponte*. In such a case it is immaterial how the invalidity is called to the attention of the court. (*Morgan v. Clapp*, 207 Cal. 221; *Reber v. Reed*, 166 Cal. 525; *Wharton v. Harlan*, 68 Cal. 422; *People v. Greene*, 74 Cal. 400.)

Long acquiescence in the appointment of a receiver, and the conduct of parties who might legally object thereto, may estop a party or a creditor, in some instances, from objecting to such appointment. (*First Nat. Bank v. Superior Court*, 12 Cal. App. 335; *Tourny v. Bryan*, 66 Cal. App. 426; *Smith v. L. A. & P. R. Co.*, 4 Cal. Unrep. 237; *Grant v. L. A. & P. R. Co.*, 116 Cal. 71.)

If the appointment of the receiver is void the costs of the receivership, including fees, are chargeable against the party procuring the appointment. (*Lewis v. Shaw*, 77 Cal. App. 99; *Andrade v. Andrade*, 84 Cal. Dec. 106; *West Riverside etc. v. Rogers*, 16 Cal. App. 262; *Grant v. L. A. & P. R. Co.*, 116 Cal. 71; *Grant v. Superior Court*, 106 Cal. 324.)

Foreclosures

In an action for the foreclosure of a mortgage a receiver may not be appointed, with power to collect rents or to take possession of or to sell growing crops, unless the mortgage is, by its express terms, a lien on the rents, issues and profits. This is true even though the mortgage provides that upon default a receiver may be appointed. (*Baker v. Varney*, 129 Cal. 564; *Locke v. Klunker*, 123 Cal. 231; *Bank of Woodland v. Heron*, 120 Cal. 614.)

A mortgage on real property which, by its terms, purports to be a lien on the rents, issues and profits, but which is not executed in the manner in which chattel mortgages are required to be executed, is void as to an assignee or an incumbrancer of the rents, crops, etc., and the right of such assignee or incumbrancer is superior to that of a receiver appointed in an action to foreclose the mortgage. (*Scott v. Hotchkiss*, 115 Cal. 89; *Pacific Fruit Exchange v. Schropfer*, 99 Cal. App. 692; *Bishop v. McKillican*, 124 Cal. 321; *Simpson v. Ferguson*, 112 Cal. 180; *Modesto Bank v. Owen*, 121 Cal. 223; *Cowdery v. London etc. Bank*, 139 Cal. 298; *Bank of Woodland v. Heron*, 120 Cal. 614; *Scott v. Sierra Lumber Co.*, 67 Cal. 71.)

AMERICAN BAR ASSOCIATION BROADCASTS

The series of radio programs by the American Bar Association, inaugurated February 12, have been received with widespread interest according to a statement from Association headquarters at Chicago. The programs are broadcast at 6 p. m. Eastern standard time, through April 23rd, and Eastern daylight saving time, beginning April 30th.

More than seventy stations of the Columbia network signed up for the program.

The remaining speakers and their subjects are as follows:

April 23—Newton D. Baker, former Secretary of War, President of the American Judicature Society, "The Lawyer Looks at His Responsibilities."

April 30—Professor Karl N. Llewellyn, of the Columbia University Law School; Professor Walter Wheeler Cook, of the Institute of Law of Johns Hopkins University; and Jerome Frank, of the Yale Law School, "How the Law Functions."

May 7—George W. Wickersham, President of the American Law Institute, "Restating the Law: An Attempt at Simplification."

May 14—Judge Learned Hand, of the U. S. Circuit Court of Appeals; Felix Frankfurter, of the Harvard Law School, "How Far Is a Judge Free in Rendering a Decision?"

May 21—John W. Davis, former Ambassador to Great Britain, former Solicitor General of the United States, former President of the American Bar Association, "Selecting Judges."

JUVENESCENT JURISTS JUMP TO JOB

Jocular Juniors in Jocund Jointure

By George Keefer, of the Los Angeles Bar

THE JUNIOR BARRISTERS, those hebetic fledglings of the Los Angeles Bar Association, have taken upon themselves the onus of maturity. No longer languishing under the depreciative cognomination of The Junior Committee, the puisne jurists have established an industrious organization of their own, the aggregate of which is recruited from those male members of the Los Angeles Bar Association admitted to practice by examination in California within the last septennate.

On February 8, 1933, an election was held resulting in the elevation of Jack W. Hardy to the office of chairman, filling the positions of first and second vice-chairmanship with Augustus Mack, Jr., and Jerold E. Weil, and conferring the duties of secretary upon Donald E. Ruppe. Under the capable leadership of these fortunate functionaries the Junior Barristers have already made their presence appreciated by progress in many lines of endeavor.

A committee headed by Max E. Utt studied some two thousand bills proposed in the California Legislature, making recommendations to the Board of Trustees of the Bar Association concerning those measures relative to the practice of law. The commendable work of this group has already been proven to be of great civic benefit.

Grant Cooper took charge of a committee whose purpose was to contact the student bodies of various local law schools and aid them in forming associations modeled after the organizations with which they have aspirations of becoming affiliated through the courtesy of their respective faculties and the Board of Bar Examiners.

Relief Drive

During the week of April 3-8, the Junior Barristers materially assisted the Red Cross by furnishing speakers to deliver brief addresses in all Los Angeles and Hollywood theatres, appealing to the generosity of the citizenry with regard to the $500,000.00 relief fund drive for rehabilitation throughout the devastated earthquake area.

A committee composed of J. W. Mullin, Jr., chairman, Milton M. Black, Lewis W. Andrews, Jr., Robert E. Paradise, and W. B. Edgerton, was selected to help the Bankruptcy Committee of the Los Angeles Bar Association in investigating and reporting on local bankruptcy practice, appointment of trustees and attorneys, etc., and in such coadjuvant capacity performed services of signal merit.

Annual Meeting

On the 11th of April the first general meeting of 1933 was held at the University Club where an excellent dinner and program was furnished for members of the Junior Barristers and their guests of the masculine persuasion. Dr. Kazoo Kawaii, professor at the University of California at Los Angeles, spoke concerning the Far East and the relation of its historical background to the present political crisis. M. Phillips Davis, in charge of entertainment for the evening, provided abundant diversion for the learned assemblage by procuring the harmonious services of Glenn Edmunds' masters of modern melody who ably demonstrated the truth of the ancient adage to the effect that music hath charms to soothe the savage barrister.

Constructive Work

The Junior Barristers believe that their association is more than an experiment in the field of professional organization. It is felt that their action has been but a step in the direction in which the omens of the business world indicate progress is to be made. Requests are being received from numbers of young attorneys in other communities that information be given them concerning the foundation and constructive work being undertaken by the Los Angeles group. A delegation has now been nominated to visit San Bernardino for the purpose of assisting in the furthering of the Junior Barrister movement in that city.

Publication of Summons in the Municipal Court

By Frank L. Holt, of Municipal Court Clerk's Office

IN SERVICE BY PUBLICATION the statute must be strictly followed, and the existence of the conditions upon which such service depends must be affirmatively shown. (Rules of court may not add to or limit the positive requirements of law. 21 Cal. Jur. 497.)

The affidavit and the order are both jurisdictional. (21 Cal. Jur. 516.) The order must direct publication in a newspaper, designated as most likely to give notice to the defendant, for a reasonable time (not less than two months where the defendant is out of the state), for at least once a week. Where the address of the defendant is known, the order must direct a copy of the complaint and summons to be mailed to him. When publication is ordered, personal service out of the state is equivalent to publication and mailing. In either case, the service is complete at the expiration of the time for publication. (See C. C. P. 413.)

Computation of Time

The first day's publication is to be included in the computation of time, unless otherwise ordered. It is not necessary that the full time prescribed shall intervene between the first and last publication, but the summons must be published once each week during the time prescribed. 21 Cal. Jur. 517, and 133 Cal. 459.

In 133 Cal. 459 the publication was ordered for once a week for two months. First publication was June 14, and the last was August 9. Default was taken September 11. Held that the two months expired on August 13. As the defendant had thirty days to appear, his default was premature. See 76 Cal. App. 290.

The mailing is as much a part of the service as the publication. The service is not complete unless the return shows proper mailing. 3 Cal. App. 151. See also 116 Cal. 91, and 144 Cal. 410.

There should be no material variance between the summons as issued and published but slight discrepancies, which are not capable of misleading the defendant as to the nature of the proceeding and the relief demanded do not render the publication invalid. 143 Cal. 673:

"Where, under a false affidavit of residence, the summons was directed to a place where the defendant never resided and by reason of such fact he had no notice of the action or judgment therein until more than one year after entry of judgment, this may be shown in an equitable action to set aside the judgment," 21 Cal. Jur. 520, see 144 Cal. 410.

Judgment Roll

The affidavit and order should be included in the judgment roll.

"Upon a direct attack by the appeal the judgment cannot be held to be void merely because the affidavits upon which the order for publication of summons was granted, do not appear in the judgment roll as is required by section 670, of the Code of Civil Procedure.

"The order for publication was not defective because it did not include the proof upon which the court found the existence of the jurisdictional facts necessary to the making of the order." 27 Cal. App. 43.

Affidavit for Publication

The affidavit must show either that

1. Defendant resides out of the state,
2. Or has departed from the state,
3. Or cannot, after due diligence, be found within the state;
4. Or conceals himself to avoid service of summons,
5. Or is a corporation having no officer or other person upon whom summons may be served, who after due diligence, can be found within the state;

(Under No. 3 it must be shown also that defendant has not filed certificate of residence under C. C. 1163.)

If the affidavit upon which an order for publication is made is insufficient in respect to the statement of facts essential to justify publication, the court acquires no jurisdiction and the judgment is void; and is subject to collateral as well as direct attack.

Affidavit or verified complaint must show that cause of action exists. It is not sufficient to allege a good cause of action; the affidavit should contain facts showing existence of cause of action, or that defendant

is a necessary party. (138 Cal. 445 & 159 Cal. 34.) Where affidavit adopts complaint, and the complaint states a cause of action, it is immaterial that the complaint is not verified. 76 Cal. 610.

It is not necessary to show in the affidavit that an attachment has issued. Where the defendant is outside the state, it is necessary that property be seized under attachment before there can be a valid judgment under which the sale of such property may be enforced by execution. 15 C. A. 444.

Under No. 1 or No. 2

It is sufficient to positively state that the defendant resides out of the state or has departed; the place of his residence may be stated on information and belief. The affidavit must show whether or not such residence is known, but no statement as to certification of residence under C. C. 1163, is necessary.

In *Bell v. McDermoth*, 198 Cal. 594, the order was held good where it recited that defendant was absent from the state of California and where it was based upon an affidavit that affiant had been informed by the wife of the defendant that the defendant was in Arizona, and that she would forward mail to him when she learned his address; and that a letter addressed to defendant at his local residence was answered by a letter from defendant dated "Arizona 5/10/22" (though posted in the city of his local residence.)

In 137 Cal. 420, it is said, ". . . We think that where the plaintiff has by affidavit stated the 'address' of the defendant out of the state, and the court has accepted this statement as evidence of the residence, it is sufficient compliance with the statute."

Under No. 3

Where defendant cannot be found within the state, the affidavit must show the exercise of due diligence and the failure to find the defendant hereby. (72 C. A. D. 294.) The decision of the trial judge that the facts set out in the affidavit show due diligence, is valid on collateral attack. An affidavit is insufficient which shows that the inquiry extended to but one person alleged to be an intimate friend of the defendant. (21 Cal. Jur. 509, citing 12 Cal. 283.) In *Rue v. Quinn*, 137 Cal. 651, a judgment after publication of summons was attacked on the ground of no jurisdiction. The affidavit was made by the attorney for plaintiff. He stated that he made due and diligent search . . . by inquiry for each of them (the defendant) of several prominent county officers (giving the names of such officers); and further stated, 'I have also made inquiry of all other persons from whom I could expect to obtain information as to the residence or whereabouts of each of the said defendants, and after such search and inquiry and due diligence the said defendant, Louisa Munro, cannot be found within the State of California.'" The court said, "The affidavit on the part of the attorney was competent to establish the facts necessary to be shown."

From the Municipal Court Rules

"In case the defendant cannot be found after due diligence, affidavit should show: (1) That inquiry has been made of the Marshal or Sheriff and he does not know his whereabouts; (2) That inquiry has been made from more than one person likely to know his whereabouts; (3) That an effort has been made to trace the defendant through his attached property, either by inquiry of the garnishee or at the property; and (4) That the city directory, the telephone directory, the voters' registry and the tax records have been searched for an address of the defendant."

Under No. 4

Where the defendant conceals himself to avoid the service of summons, it is necessary to set forth probative facts in the affidavit from which the court or judge may determine the fact of concealment. A mere statement that the summons was placed in the hands of several individuals, naming them, and that unsuccessful efforts were made by such persons to serve the same, is insufficient.

In 115 Cal. 689, it is said, "Where service of process upon a defendant within the county is attempted to be made by a person other than the sheriff, his affidavit should as a rule be required, showing the nature of the effort made to serve the party, and where practicable, the reasons why such service cannot be had."

The ideal method of selecting judges is by appointment by a conscientious and discriminating appointing power rather than the present elective system according to the majority report of a special commiitee of the New York State Bar Association read at its 56th annual meeting held recently, at the Bar Association quarters.

Official Vote in Bar Plebiscite on Candidates for Municipal Court

Total ballots sent out 2114
Total ballots received by committee 1203
Total ballots disqualified and NOT counted 20
Number of ballots counted 1183

Offices	Candidates	Votes
No. 1	*Thomas L. Ambrose	1098
No. 2	*May D. Lahey	1078
No. 3	*Ellis A. Eagan	1052
	Sydney M. Williams	67
No. 4	L. Lee Bernstein	31
	*Harold B. Landreth	1079
	Alfred E. Tapper	27
No. 5	Benjamin J. Scheinman	949
No. 6	Hugh J. Crawford	156
	Lindsay K. Dickey	119
	F. B. Mullendore	268
	Donald M. Redwine	116
	*Charles F. Reiche	469
No. 7	Melville R. Adams	109
	*Leo Aggeler	1012
No. 8	D. Brandon Bernstein	110
	*Joseph L. Call	1016
No. 9	Francis D. Adams	92
	*Clement D. Nye	1041
No. 10	*Thurmond Clarke	999
	Leo Gallagher	125
No. 11	Edward R. Brand	148
	Arthur E. Briggs	266
	C. Newell Carns	152
	*J. Geo. Ohannesian	298
	Ernest R. Orfila	201
No. 12	*Ray Brockman	1020
	Arthur S. Guerin	54
	Harry Margid	32
	J. Edward McCurdy	30

* Indicates plebiscite choice; under the new By-Laws a plurality vote is necessary for endorsement.

The following members gave their time to the important work of counting and tabulating the vote. To them thanks is due.

W. H. Anderson
Rosalind G. Bates
Milton M. Black
Gerald Bridges
Kenneth N. Chantry
John J. Ford
W. I. Gilbert, Jr.
Russell Hardy
L. L. Larrabee
Bernice Morris
J. W. Mullin, Jr.
Milo V. Olson
William Roethke
Kenwood Rohrer
L. H. Rose
Donald E. Ruppe
Arch Tuthill
Jerold E. Weil

LIBRARY LECTURE SERIES

Organized Bar's Service to the Public

By Charles E. Beardsley, of the Los Angeles Bar

WHAT IS THE KEYNOTE of the program being carried out by the Speakers' Bureau Committee. At present, the Committee is making lawyers and the Bar Association of service to the public by presenting a series of public lectures at the Central Library. Believing that we are living in an era of change, social, economic, and political, the Committee has chosen for the general subject of its course of lectures "Law and the Changing Order."

That the public is interested in learning what part law has and is to have in the changing order is proven by capacity attendance at the first of the lectures. That talk was given on March 15th by Judge Leon R. Yankwich on the subject "The Nature of Law and the Judicial Process."

The second lecture, also very well attended, was presented by Harry J. McClean, a former trustee of the Bar Association, on the evening of April 12th. Mr. McClean spoke on "Business and the Law."

The remaining lectures of the series are as follows:

May 3, 1933, "Liberty and the Law," by John Beardsley, a member of the Los Angeles Bar, and chairman of the Constitutional Rights Committee of the Los Angeles Bar Association.

May 10, 1933, "Law and the Family," by Hon. Robert Scott, Judge of the Superior Court, Los Angeles County, and former judge in the Juvenile Court, in Los Angeles.

May 24, 1933, "Your Neighbor and the Law," by Arthur L. Syvertson, a member of the Los Angeles Bar Association.

May 31, 1933, "Law and Its Administration," by Everett W. Mattoon, county counsel, Los Angeles County.

June 7, 1933, "Law and Its Limitations," by Hon. Guy R. Crump, President of the State Bar of California, and former Judge of the Superior Court, Los Angeles County.

While the lectures are not of such a technical nature as to be interesting only to members of the profession, but are planned primarily to interest laymen, it is believed that the general subject is so timely, and the speakers on the program are so interesting, that every member of the Bar will find the lectures well worth attending.

It is hoped that focusing the public's attention on these lectures will bring about a demand for talks of this kind before civic and fraternal bodies throughout the county, and that the Speakers' Bureau Committee can perform a real service by making interesting and educational material of this kind available to the people and organizations of Los Angeles.

"Law Review" Luncheons

The first of a series of noonday meetings at which the lawyers of Los Angeles are invited to hear discussions of important new laws, was held on April 10th. It was a success, both in the matter of attendance and the general interest in the subject of the speaker, Rupert B. Turnbull, referee in bankruptcy. More than 125 lawyers were in attendance. Mr. Turnbull explained the provisions of the important amendments to the Bankruptcy Act, which, he said, had apparently been drawn without the consideration which such important legislation demanded. He stated that, in his opinion, some of the provisions would have to receive court interpretation before the lawyers would feel confident in their procedure.

The Los Angeles Bar Association, through its Speakers' Bureau Committee, has inaugurated this series of luncheons to be held bi-monthly at Boos Bros. Cafeteria, 648 South Broadway. All attorneys are invited; no business is transacted and those attending can get back to their offices by 1:30 P. M.

Noonday meetings have long been considered by the Bar Association, and the Speakers' Bureau Committee, C. E. McDowell, chairman, has arranged a series of topics to be discussed by lawyers qualified to speak on various subjects, particularly on the many new laws that have been enacted, or which will be enacted by the Legislature and by Congress during the succeeding months.

Inheritance Tax Committee Urges Support for Bill to Reform Present System

Assembly Bill No. 2359 introduced by Assemblyman Kent Redwine, of the Los Angeles Bar, is designed to put the inhertance tax appraisers under joint control of our probate court and the state controller; to do away with the per diem method of fees to appraisers which has led to unnecessary delay in making appraisements and to excessive fees for same. The Redwine bill puts the appraisers on a fixed salary and directs all moneys charged for the service to be paid into a special fund in the hands of the county treasurer so that the public can have some knowledge of the cost of same.

The fees shall be: On first $5,000 of an estate, $5; on next $495,000, one-tenth of one per cent; on all over $500,000, one-twentieth of one per cent.

This bill is the result of the work of three different committees of the Los Angeles Bar Association for the years 1931, 1932 and 1933, and all three committees, each with different memberships, have without dissent reported in favor of the principles embraced in the Redwine Bill. The Senior Probate Judge in Los Angeles favors the change. The President and Board of Directors of our Los Angeles Bar Association are in favor of the bill. Members of the Bar are urged by the Inheritance Tax Committee to immediately write or wire Kent Redwine, Assemblyman, State Capitol, Sacramento, their support of Assembly Bill 2359.

THATCHER KEMP, Chairman
ELMO CONLEY,
JOSEPH D. PEELER,
ROBERT A. WARING,
LLOYD BROOKE,
FRED MILLER,
GEO. P. TAUBMAN, JR.,
Inheritance Tax Committee.

Red Cross Campaign

The Red Cross campaign for relief of sufferers from the recent earthquake in Southern California is now actively under way. The City of Los Angeles has agreed to raise $250,000 and of this amount $3,500 has been allocated to the lawyers. This money is to be used solely for the rehabilitation of small dwellings where the families have no savings or funds and to provide shelter, food, clothing and medical attention. None of these sufferers can participate in the R. F. C. Loan.

Perhaps you have already been solicited by some of the Lawyers' Committee, but in case you have not made a contribution you may mail your check payable to the order of The American Red Cross to either of the following addresses. Your assistance is urgently needed if the lawyers are to meet their quota.

SOUTHERN CALIFORNIA DISASTER
RELIEF FUND COMMITTEE
GURNEY E. NEWLIN,
Chairman,
Edison Building.

ELMO H. CONLEY,
Chairman of Lawyers'
Sub-Committee,
634 South Spring St.

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Opening for a Lawyer

Mrs. Etta M. Thompson, widow of Fred H. Thompson, recently deceased well-known criminal lawyer of Brawley, Calif., requests that *The Bulletin* announce that her husband left a wide established practice in the Imperial Valley, and that there is a good opportunity for an able lawyer who may be looking for a new field. Mrs. Thompson says:

"He has had a very large criminal practice, with all the civil practice he could handle in connection therewith. I, of course, would like to make some arrangements with some one who is looking for a new field just as soon as possible, and see if we might come to some agreement as to his practice and clientele, office furnishings and books."

Mrs. Thompson's address is 306 Imperial Ave., Brawley, Calif.

JAMES B.OGG,
39 EAST MAIN ST.,
ALHAMBRA,CALIF.